

# General Terms of Delivery of SMA Technologie AG

– GTD Edition September 2004 –

## I. General Provisions

1. These General Terms of Delivery (hereinafter referred to as GTD) shall apply for all offers, deliveries and services (hereinafter referred to as deliveries) of SMA Technologie AG (hereinafter referred to as SMA) to its principals (hereinafter referred to as Principals). They shall also apply to all future transactions between the parties to the contract without requiring any reference thereto again.
2. The General Terms of Business of the Principal shall only apply in so far as SMA has given its express consent in writing.
3. In the event that provisions diverging from these provisions are agreed upon in writing for particular deliveries, these GTD shall be deemed as subordinate and supplementary.
4. The Principal shall be granted the non-exclusive right to use the standard software with the features of performance stipulated in the contract without altering its form. Passing on the software, the sale thereof or using it elsewhere, as well as the reproduction of the software beyond the scope of a security copy, shall only be admissible with the written consent of SMA. In the event of infringement, the Principal shall be obliged to compensate SMA for the damage suffered by the latter.
5. SMA shall be entitled to all rights in the offer documentation. All documentation shall be immediately returned upon request by SMA in case the order is not placed. Trade and business secrets must be handled strictly confidential.
6. Any documentation, specimen or samples belonging to the offer as well as technical specifications and descriptions in the respective product information or advertising material are non-committal and of purely informational nature. They do not constitute any guarantee of quality or durability for the goods to be supplied or services to be rendered by SMA.

## II. Prices – Packing – Terms of Payment

1. In so far as nothing to the contrary is set forth in the confirmation of order, prices are quoted "ex works" and "excluding packing" plus statutory value-added tax at the prevailing rate.
2. All payments shall be effected in EURO within 30 days from the presentation of invoice free of charge to an account to be named by SMA.
3. Should the Principal get into arrears or circumstances become known after conclusion of the contract which calls its creditworthiness into question, SMA shall be entitled to make the residual debts of the Principal due and payable immediately, to demand advance payments or the provision of securities or to rescind the contract without prejudice to other rights after expiry of a reasonable period of grace. In particular, SMA may call into question the creditworthiness of the Principal if the Principal stops payments, if insolvency proceedings have been instituted with relation to the Principal's assets or if a petition has been filed to institute insolvency proceedings and the insolvency proceedings are not instituted due to the insufficiency of assets.
4. The Principal may only discharge by way of set-off such counter-claims which are undisputed, recognized by SMA or have been determined to be final and conclusive. The same shall apply to the assertion of rights of retention.

## III. Delivery – Delivery deadlines – Delay

1. SMA is entitled to effect part shipment and render partial services and to charge for them. SMA is also entitled to change the material of the products to be supplied without prior consent of the Principal in so far as this does not change the properties or functionality of the products.
2. The prerequisites for the observation of delivery deadlines are the timely receipt of all provisions, documentation, permits and clearances to be furnished by the Principal as well as the observation of the stipulated terms of payment including down-payments and all other obligations required for the delivery. Otherwise, the delivery deadline will be extended by a reasonable period of time.
3. The delivery deadline shall be deemed to have been observed if the delivery item has been dispatched by the date of expiry or if the Principal has been informed that the consignment is ready for dispatch.
4. In case of industrial disputes, official action, force majeure or the occurrence of similar incidents, which probably interfere with the ability of SMA to deliver, the delivery deadline will be extended by a reasonable period of time.
5. Should the promised service be unavailable because SMA was not supplied by its subcontractors, SMA shall be entitled to render a service of equal quality and price. Should this also be impossible, SMA may rescind the contract. In such a case, SMA shall notify the Principal of the non-availability without delay and immediately reimburse any payments already made by the Principal.
6. Compensation claims by the Principal due to delay in delivery or compensation as a replacement for the service are ruled out in all cases of delayed delivery, even after expiry of any deadline set to effect delivery. This shall not apply if there is compulsory liability in cases of wrongful intent, gross negligence or due to injury to life, body or health. Except in the case of defects of quality, the Principal can only rescind the contract if SMA is responsible for the breach of duty. The above provisions shall not involve a change in the burden of proof to the detriment of the Principal.
7. The Principal undertakes, upon request by SMA, to state within a reasonable period of time whether he wishes to rescind the contract or insist on the delivery due to the delay in delivery.

## IV. Passing of the Risk

1. The risk shall pass to the Principal when the delivery item has been dispatched or collected, even if delivery carriage paid was agreed upon. If desired by the Principal, consignments will be insured against normal transport risks by SMA at the expense of the Principal.
2. The choice of routing will be made by SMA.

## V. Reservation of Ownership

1. SMA reserves the right of ownership of the delivered goods until all claims arising from the business relationship have been satisfied. Until then, the Principal shall be forbidden from pledging or transferring ownership by way of security.
2. The Principal is entitled to resell the goods in the normal course of business under reservation of ownership. At this point he shall already assign all of his claims against his customers to SMA to the value of the claims by SMA. SMA shall accept this assignment. The Principal shall still be entitled to collect the assigned claims. This authority to collect shall lapse if the Principal gets into arrears or goes into financial collapse in any other manner.
3. Any treatment or processing of the reserved goods shall be carried out for SMA without the latter incurring any obligations from this. In the case of processing with outside objects that do not belong to SMA, SMA shall be entitled to the co-ownership share in the new object in proportion of the invoice value of the reserved goods to the other objects at the time of processing. The same shall apply if the Principal acquires sole ownership pursuant to § 947 (2) of the German Civil Code. The new object held for SMA in custody by the Principal free of charge is a reserved item in accordance with this provision. In the event of the reserved goods being sold or used for the fulfilment of any contract, then the

Principal shall now assign the purchase-money claims or the remuneration claims arising from this to SMA, regardless of whether the reserved goods are passed onto one or several purchasers without or after processing, alone or together with objects of outside sources. Incidental claims in connection with the reserved goods, particularly insurance claims, shall also be assigned at the same time and to the same extent. SMA shall accept this assignment.

4. The Principal shall notify SMA immediately in case of levies of execution, seizures or other orders or interference by third parties.
5. In the case of breaches of duty by the Principal, particularly in the case of a delay in payment, SMA shall be entitled to rescind the contract after the unsuccessful expiry of a reasonable deadline set for the Principal to perform his obligations. SMA shall be entitled to take back the reserved goods, and, for this purpose, to enter the premises of the Principal and to use the goods to set off the existing accounts payable to SMA.
6. In so far as the realistic value of the securities exceeds the claims to be secured by more than 20%, SMA undertakes to release the existing securities on demand by the Principal.

## VI. Defects of Quality

1. The Principal may not refuse acceptance of a delivery due to slight defects. § 377 of the German Commercial Code shall apply subject to the proviso that obvious and/or ascertained defects are reported in writing and in detail within 8 days before treatment or processing of the goods or adjunction of the goods.
2. Fault claims shall become statute-barred 12 months after the date when the risk was passed. This shall not apply in so far as compulsory longer periods are prescribed by law and in cases of injury to life, body or health, and in case of a willful or grossly negligent breach of duty by SMA as well as in case of malicious non-disclosure of a fault.
3. SMA may choose to remedy defects free of charge, to effect a new delivery or render the service again for all of those parts or services showing signs of defects within the statutory period of limitation, in so far as the cause of these defects was in existence at the time of the passing of risk. In the case of software faults, the instructions for the avoidance of the consequences of the fault shall be deemed as adequate subsequent fulfilment.
4. Should this subsequent fulfilment fail more than two times, the Principal shall be entitled to rescind the contract or reasonably reduce the remuneration without prejudice to any compensation claims in accordance with section VII.
5. Warranty claims shall not be permitted in case of only slight deviations in the stipulated condition, slight impairment of usability, natural wear or in case of damage arising after the passing of the risk through incorrect or negligent handling, the use of unsuitable production equipment and facilities, poor construction, overload, lightning damage or similar outside influences, as well as through modifications or repairs not being carried out in the appropriate manner and servicing not being carried out in the proper manner as prescribed by the operating instructions and in case of non-reproducible software faults.
6. In case of deficiency claims, the Principal may only withhold payments to the extent that they are in reasonable proportion to the defects of quality that have occurred. If the deficiency claim was made wrongfully, SMA is entitled to claim the expenses incurred from the Principal.
7. Claims by the Principal to the expenses made necessary for the purpose of subsequent fulfilment, in particular costs of transport, infrastructure, labour and materials, are ruled out in so far as the expenses rise due to the object of the delivery being taken to a site other than the branch office of the Principal, unless this subsequent transfer corresponds to its contractual use.
8. Claims under a right of recourse of the Principal against SMA pursuant to § 478 of the German Civil Code (recourse by the manufacturer) shall only exist in so far as the Principal has not concluded any agreements beyond the scope of the statutory deficiency claims with his customer. For the extent of the claim under a right of recourse by the Principal against SMA pursuant to § 478 (2) of the German Civil Code, sub-item 7 shall apply accordingly.
9. Section VII (other compensation claims) shall apply for other compensation claims. Deficiency claims by the Principal against SMA and its vicarious agents, that go beyond or are different from those regulated in section VI, shall be excluded.

## VII. Other Compensation Claims

1. Compensation claims and claims for reimbursement of expenses by the Principal, regardless for what legal reasons, particularly for breach of duty from the relationship under the law of obligations and for unauthorised actions, shall be excluded. In particular, SMA will not be held liable for willful, undutiful behaviour of its vicarious agents.
2. This shall not apply in cases where liability is compulsory, e.g. in accordance with the German product liability act, in cases of wrongful intent or gross negligence, for injury to life, body or health or due to malicious non-disclosure of a defect or material breach of contract. Compensation for a material breach of contract shall, however, be limited to the foreseeable damage in standard contracts, except in the case of liability for wrongful intent or gross negligence or due to injury to life, body or health.
3. The Principal shall indemnify SMA from claims under the product liability act in case SMA manufactures a product on behalf of or under the direction of the Principal without any knowledge of the final product or of its purpose.
4. The SMA products may not be used in the field of medicine or aviation without prior written consent.
5. Exemptions from liabilities or limitations of liabilities in favour of SMA shall also apply to the personal liability of the workers, employees, representatives and vicarious agents of SMA.
6. The period of limitation for the compensation claims that the Principal is entitled to in accordance with section VII shall depend on the period of limitation valid for deficiency claims pursuant to section VI, sub-item 2.
7. The statutory limitations provisions shall apply to deficiency claims in accordance with the German product liability act.
7. The above provisions shall not involve a change in the burden of proof to the detriment of the Principal.

## VIII. Other Conditions

1. The place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be Kassel. However, SMA is also entitled to start legal action at the court of jurisdiction at the legal business domicile of the Principal.
2. Even if individual provisions of the contract are or become ineffective, the remaining parts of the contract shall remain unaffected, unless holding onto the contract would constitute an unreasonable hardship for one of the parties.
3. Customer data within the framework of our mutual business relationships shall be stored in accordance with the Federal law on data protection.

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